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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 Encompass Health Rehabilitation Hospital
13 of Desert Canyon, LLC; Encompass Health
14 Rehabilitation Hospital of Las Vegas, LLC;
15 and Encompass Health Rehabilitation
16 Hospital of Henderson, LLC,

17 Plaintiffs,

18 v.

19 Xavier Becerra, Secretary of the United
20 States Department of Health and Human
21 Services,

22 Defendant.

Case No. 2:23-cv-01523-RFB-NJK

**Order granting
Unopposed Motion for Extension of
Time**

(First Request)

23 The United States, on behalf of Defendant Xavier Becerra, Secretary of the U.S.
24 Department of Health and Human Services, respectfully moves for a 60-day extension of
25 time, from December 11, 2023 to February 9, 2024, to file a response to Plaintiffs'
26 Complaint (ECF No. 1). This is the first request for an extension of time.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 Federal Rule of Civil Procedure 6(b)(1) and Local Rule IA 6-1 allow a party to
request additional time to perform an act. In this case, the United States requests additional
time to file a response to the Complaint for the reasons set forth below.

1 Plaintiffs filed their Complaint on September 24, 2023. ECF No. 1. Plaintiffs served
2 the United States Attorney's Office with a copy of the Summons and Complaint on
3 October 10, 2023. The United States' deadline to answer or otherwise respond to Plaintiffs'
4 Complaint is December 11, 2023.

5 In cases such as this one, where Plaintiffs seek judicial review from the Medicare
6 program, the United States is required to file a certified copy of the administrative record
7 with its answer. 42 U.S.C. § 405(g) ("As part of the Commissioner's answer the
8 Commissioner of Social Security shall file a certified copy of the transcript of record
9 including the evidence upon which the findings and decisions of are based."); 42 U.S.C. §
10 1395ff(b)(1) (making the provisions of 42 U.S.C. § 405(g) applicable to Medicare appeals).
11 Accordingly, certified copies of the 31 administrative records at issue in this case are also
12 due on December 11, 2023.

13 The Departmental Appeals Board (DAB) is a component of HHS. The Medicare
14 Operations Division (MOD) of DAB is responsible for preparing the administrative records
15 for cases appealed to federal district court that were adjudicated by the Medicare Appeals
16 Council. DAB has begun preparing the administrative record for the 31 matters at issue in
17 this case. DAB estimates that this process will be complete on or about January 12, 2024.

18 Thereafter, the administrative record will be certified and transmitted to the Office
19 of the General Counsel for HHS and the Offices of the United States Attorneys. This
20 extension of time is requested to allow undersigned counsel adequate time to review
21 relevant materials and prepare an appropriate response to the Complaint in this matter.
22 This motion is filed in good faith and not for the purposes of undue delay. Undersigned
23 defense counsel has consulted with Plaintiffs' counsel, Mr. Bird, who advises that he does
24 not object to the request for extension requested herein.

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1 For the above reasons, the United States respectfully requests this extension of time,
2 from December 11, 2023 to February 9, 2023, to file a response to Plaintiff's Complaint.

3 Respectfully submitted this 8th day of December 2023.

4 JASON M. FRIERSON
5 United States Attorney

6 /s/ Summer A. Johnson
7 SUMMER A. JOHNSON
8 Assistant United States Attorney

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10 **IT IS SO ORDERED**

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13 **UNITED STATES MAGISTRATE JUDGE**

14 **DATED:** December 11, 2023
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